

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: John C. Rayson

PREPARED BY: John C. Rayson

SUBJECT: Litigation Report

AFFECTED DISTRICT: Town-Wide

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: Litigation Report

REPORT IN BRIEF: See Attached

PREVIOUS ACTIONS:

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

If yes, expected cost: \$

Account Name:

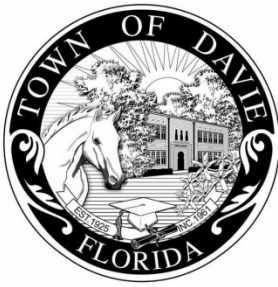
If no, amount needed: \$

What account will funds be appropriated from:

Additional Comments:

RECOMMENDATION(S):

Attachment(s): Litigation Report



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TOWN ATTORNEY REPORT

DATE: April 2, 2008
FROM: John C. Rayson, Esq.
RE: Litigation Report Update

1. PARKCITY MANAGEMENT CORP. vs. TOWN OF DAVIE AND PARK CITY ESTATES HOMEOWNERS ASSOCIATION: The Town was sued for Declaratory Relief regarding the issue of the maintenance of the 18th Street median strip within the Park City Mobile Home Park. The Judge then allowed the Plaintiff to file an Amended Complaint which names Park City Homeowners' Association as a defendant in the lawsuit. The Town filed an Answer in response to the Complaint and discovery ensued. The Co-Defendant, Park City Estates Homeowners Association, filed a Motion to Dismiss the Complaint, which was denied. The former Town Attorney has taken several depositions of potential witnesses for the Town and for all other parties in this lawsuit. Park City has been billed for services rendered by the Town of Davie.

2. FEINGOLD vs. TOWN OF DAVIE and FPL: Richard McDuff, Esq. represents the Town in this negligence action. The Complaint alleges that Plaintiff was thrown from a horse by electrical wiring and is claiming bodily injury. The Plaintiff eventually dropped FPL and two unknown Defendants in this litigation. Thereafter, Plaintiff filed an Amended Complaint, Count 2 of which was dismissed by the Court. The Town Attorney spoke with Mr. McDuff on October 2, 2007, who advised that Plaintiff's counsel recently noticed the case for trial and we are awaiting a trial date. On February 4, 2008, The Assistant Town Attorney spoke with attorney Jeff Hochman, who advised that some reports were not disclosed during depositions of Plaintiff's expert in electrical engineering. Therefore, attorney Hochman filed a motion for an order to force the Plaintiff to turnover the undisclosed reports. The deposition has been re-set.

3. TOWN OF DAVIE vs. OSVALDO CIEDI: The Town filed a six count Code Enforcement action against the property owner alleging that he and others had violated the Davie Town Code and Charter. The Special Magistrate found the property owner in violation of provisions of the Town Code and Charter. The property owner has been ordered to come into compliance with the Town Code and Charter by removing the solid waste in a safe manner. Mr. Ciedi has complied

with the Order and the case is now in a *status quo* posture. In particular, the Town is close to reaching an agreement with Mr. Ciedi pursuant to which any development of the property would be contingent upon the replacement of any remaining solid waste with approved fill. It should be noted that the dumping has ceased and that, over time, the solid waste at issue has essentially deteriorated into soil, so that the urgency of this matter has significantly lessened. There are several potential buyers of the property. Any buyer would be bound by the agreement to replace any remaining waste with approved fill.

4. MATTHEW MALIN and BRANDON RIVERA vs. TOWN OF DAVIE POLICE

DEPARTMENT: The Town was sued by Plaintiff alleging religious discrimination. The case has been assigned to Mr. Harry Boreth to defend the Town and Mr. Boreth has indicated that the Town is actively defending the lawsuit. On October 3, 2007, the Town Attorney spoke with Mr. Boreth, who indicated that the case is in the discovery phase and that the litigation is active and ongoing. On February 4, 2008, attorney Boreth stated that he is in the process of filing a motion for summary judgment.

5. MARINA SWEAT vs. TOWN OF DAVIE: The Plaintiff originally filed a Complaint alleging sexual harassment and retaliation. On October 3, 2006, our special legal counsel, Mr. Harry Boreth, advised the Town Attorney that the case has been dismissed. Accordingly, the Town has moved for recovery of its costs. However, the Plaintiff has filed what appears to be an untimely appeal. Negotiations are ongoing concerning an agreement for Plaintiff to pay the Town's costs and for Plaintiff to dismiss its untimely appeal. As of February 4, 2008, we are pursuing recovery of our attorneys' fees.

6. WAL-MART STORES EAST L.P. vs. TOWN OF DAVIE: This case is now on appeal in the Fourth District Court of Appeal. The Petition for Writ of Certiorari filed by Wal-Mart (seeking judicial review of the Town Council's denial of Wal-Mart's application for site plan approval) in the State Court was denied on March 9, 2007. Wal-Mart's Motion for Rehearing was also denied in the State Court. Thereafter, Wal-Mart filed a Petition for Writ of Certiorari with the Appellate Court on May 10, 2007 seeking review of the State Court's denial of the first-tier Petition for Writ of Certiorari. This case remains stayed at the State Court level pending a ruling by the Appellate Court. The Town is represented by Andrew Maurois on appeal. The Town Attorney's office is awaiting the ruling of the Court. Upon the Town Attorney's recommendation, the Town Administrator authorized substitution of Michael T. Burke, Esq. as counsel for the Town of Davie. On October 5, 2007, Wal-Mart filed a Motion in the U.S. District Court for the Southern District of Florida seeking to enforce a 1987 settlement agreement which the Town of Davie entered into with Mr. Spielman. Mr. Burke is preparing the Town's motion in opposition to Wal-Mart's motion. On December 6, 2007 a hearing on Wal-Mart's Motion to Enforce Settlement Agreement was held. Magistrate Judge Turnoff entered an Order Denying without prejudice Wal-Mart's motion. The Town is filing objections to Judge Turnoff's factual findings that the U. S. District Court retained jurisdiction to determine compliance with the development agreement portion of

the old settlement. On January 28, 2008, the Town of Davie has filed its Response to Plaintiff's Objection to Report and Recommendation. The same date Plaintiff filed a Response to Town of Davie's Objection to the Magistrate's Report and Recommendation. In addition, the District Judge Alan Gold has scheduled a hearing on Wal-Mart's Motion to Enforce Settlement on February 15, 2008.

7. LORRYCE BROWN vs. TOWN OF DAVIE: A second lawsuit against the Town alleging that Plaintiff was thrown from a horse due to electrical Special Counsel, Richard McDuff. Mr. McDuff has filed an Answer to Count 1 and a Motion to Dismiss regarding Count 2. His office is currently conducting discovery. On November 2, 2006, the Town Attorney spoke with Mr. McDuff who advised that the status of this litigation remains the same. On November 16, 2006, the Attorney had filed a Motion to Extend the Time in which to Respond to the Town's Discovery Request. On December 19, 2006, the Town Attorney spoke with Mr. McDuff's legal assistant who indicated that as of this date the Court had not yet ruled on the Plaintiff's Motion to Extend the Time to Respond. On February 4, 2008, the Assistant Town Attorney spoke to attorney Jeff Hochman who stated that the attorney for Plaintiff has withdrawn. As of this date, Plaintiff is not pursuing this case any longer.

8. ALSINA vs. GONZALEZ and the TOWN OF DAVIE: This is a code enforcement case that resulted in Alsina filing a lawsuit. The Alsina's rebuilt their screened patio after Hurricane Wilma. The patio now encroaches on the neighbor's (Gonzalez) property. The Town has imposed \$60,000 in fines due to the continuing violation and the Alsina's refusal to correct or remove the encroaching patio. The Alsina's filed a lawsuit for adverse possession against Gonzalez and seeking an emergency injunction to prevent the Town from assessing or collecting any fines until the adverse possession claim against Gonzalez is adjudicated. After a full hearing, the Honorable Barry Goldstein denied Alsina's motion for injunction, stating that the Special Magistrate had authority to impose the fines and the Court could not interfere with the Special Magistrates' findings and rulings. Thus, the Town can continue to assess fines as long as the violation continues. The only action that the Town can not take without Court order is removing the patio. According to Robert Harris, Chief Code Compliance Officer, removal of the patio is not an action that the Town would undertake in any event. As of February 4, 2008, the parties are still in process of responding to each other's claims, and the Town is merely a bystander to this action.

9. NOVASTAR vs. MELANIE RODRIGUEZ, TOWN OF DAVIE, et al: Mortgage foreclosure case. The Town has a recorded Order Imposing Administrative Fine. The Final Judgment has been entered which recognizes and preserves the Town's lien rights. We have not received notice of a sale date yet. Rodriguez had filed for bankruptcy and as a result of this proceeding; the foreclosure sale has been rescheduled.

10. DEUTSCHE BANK vs. THEODORE COLLIER, TOWN OF DAVIE, et al: This is a new mortgage foreclosure case. The Town has a recorded Order

Imposing Municipal Code Enforcement Lien and Administrative Fine in the amount of \$22,400. We have responded to the foreclosure complaint by asserting our lien rights as an affirmative defense. There have been no hearings scheduled yet as this is a new case.

11. DEUTSCHE BANK vs. TOM HARVEY, TOWN OF DAVIE, et al.: New mortgage foreclosure case. The Town has a recorded Order Imposing Municipal Code Compliance Lien in the amount of \$1,800. We will respond to lawsuit by asserting the Town's lien rights as an affirmative defense.

12. ASSET ACCEPTANCE, LLC. vs. KOSSIBI KOKOU: Final Judgment in Garnishment and Order Directing Garnishee (Town of Davie) to Disburse Funds was entered on August 27, 2007. The Town Attorney's office forwarded a copy of the foregoing Judgment and Order to the Town Budget and Finance Director's office on September 4, 2007.

13. OAKES FIRE STATION (PINO KAOBA) : The roof has been warranted and the matter is getting close to settlement. Issues remain as to punch list items and payment.

14. FIRST RESOLUTION INVESTMENT CORP. vs. GREG ATKINS AND TOWN OF DAVIE (GARNISHEE): This is a garnishment action in the State of Iowa. The former Town Attorney filed an Answer to the Garnishment on July 12, 2007. The Town Attorney is awaiting further action.

15. BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY vs. JOHNNY WILLIAMS; et.al.: This is a Property Mortgage Foreclosure action. The Town of Davie's answer and affirmative defenses were filed on March 12, 2008. The Town Attorney is awaiting further action.

16. BP LOANS, LLC (50%) AND MEISTER FINANCIAL GROUP, INC. (50%) vs. TOP VIDEO & PRODUCTIONS, USA, INC., a Florida Corporation, et al.: This is a Property Mortgage Foreclosure action. The of Davie's answer and affirmative defenses were filed on March 10, 2008. The Town Attorney is awaiting further action.

17. N & D HOLDING, INC., a Florida Corporation vs. Town of Davie: This is a Declaratory Judgment action. The Town of Davie's motion to dismiss was filed on March 12, 2008. Plaintiff's N&D filed a memorandum in opposition to the Town's motion to dismiss on March 18, 2008. Nonetheless, a meeting with attorneys Rayson and Brady is set for Thursday April 10 to discuss settlement of this lawsuit.

18. THE TOWN OF DAVIE vs. SOUTHERN WASTE SYSTEMS, LLC., (Diamond III LLC and Broeren Russo Builders of Florida, LLC.): This is a pending appeal action (code violation). On February 29, 2008, Southern Waste Systems along with Diamond III filed a Notice of Appeal with the Court appealing the Town of Davie's Special Magistrate's Final Order rendered on January 31, 2008. On March 14, 2008, Southern Waste Systems filed an unopposed motion to dismiss Diamond III, LLC and Broeren Russo Builders of Florida, LLC from the appeal. The Town attorney is awaiting further action.

19. THE TOWN OF DAVIE vs. SOUTHERN WASTE SYSTEMS, LLC., (Flamingo Village Corp. and American Engineering & Construction, Inc.): This is a pending appeal action (code violation). On February 29, 2008, Southern Waste Systems along with Flamingo Village Corp., and American Engineering & Construction, Inc. filed a Notice of Appeal with the Court appealing the Town of Davie's Special Magistrate's Final Order rendered on January 31, 2008. On March 14, 2008, Southern Waste Systems filed an unopposed motion to dismiss Flamingo Village Corp., and American Engineering & Construction, Inc., from the appeal. The Town attorney is awaiting further action.